

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY**

SILVERVIEW FARM, INC.,)	
)	
Appellant/Defendant below,)	C.A. No. 05-09-168
)	
v.)	
)	
TIMOTHY L. LAUSHEY and)	
SUSAN B. HEHMAN)	
)	
Appellees/Plaintiffs below.)	

Submitted February 23, 2006
Decided April 26, 2006

John W. Pardee, Esquire, counsel for Appellant/Defendant below.
Christopher W. White, Esquire, counsel for Appellees/Plaintiffs below.

**DECISION ON APPELLANT/DEFENDANT BELOW'S
MOTION TO DISMISS**

On January 30, 2006, the Appellant/Defendant below (“Defendant”) made a pretrial motion to dismiss this appeal from the Justice of the Peace Court, citing a violation of the mirror image rule. After conducting a hearing, the Court reserved decision. Appellant filed a post-hearing supplemental brief; Appellee apparently declined to respond to the supplemental brief. This is the Court’s findings and decision after reviewing counsels’ briefs and the hearing record.

BACKGROUND

This matter comes before this Court as a *de novo* appeal from the Justice of the Peace Court (“J.P. Court”). The Plaintiffs are tenants of the manufactured home community owned by the Defendant. The record below reflects that the Plaintiffs, then *pro se*, filed suit against the

Defendant for breach of contract, harassment and non-compliance with the Manufactured Home Owners and Community Owners Act (“Act”). The Defendant counterclaimed against the Plaintiffs, seeking summary possession and back rent for the rented property.

According to the J.P. Court Order, the court found insufficient evidence to substantiate the Plaintiffs’ claim that the Defendant failed to properly re-grade the lot, resulting in the alleged erosion. The Order also demonstrates that the court heard evidence that the Defendant engaged in a pattern of harassment against the Plaintiffs after the Plaintiffs complained of an erosion problem. Specifically, the Court identified the pattern of harassment as the arbitrary enforcement of unreasonable community rules on the Plaintiffs, which it found to be in contradiction to 25 *Del. C.* § 7006. Furthermore, the court found that the pattern of harassment “fit the definition of a retaliatory act prohibited under 25 *Del. C.* § 7023.” (Def. Mot. Dismiss, Ex. E.)

With respect to damages, in a pretrial motion, the court dismissed the Plaintiffs’ request for damages in the amount of wages lost on the day of court, because it found that such damages were not legally compensable. The Court interpreted the Plaintiffs’ request to have the Defendant “remedy the erosion” as a request for equitable relief, which it denied for lack of sufficient evidence of the alleged erosion problem. On the cause of action relating to harassment, the Court awarded the Plaintiffs three months rent pursuant to 25 *Del. C.* § 7023(e).

In the Complaint on Appeal, the Plaintiffs set forth two claims. First, the Plaintiffs allege that the Defendant committed retaliatory acts in violation of 25 *Del. C.* § 7023 when it engaged in a practice of harassing the Plaintiffs after they made a good faith complaint about the erosion problem. Second, the Plaintiffs claim that the Defendant failed to comply with 25 *Del. C.* § 7006(13)(a) and breached the rental agreement when it failed to re-grade the lot in order to prevent the detrimental effects of

moving water on the property. For the alleged violation of § 7023, the Plaintiffs seek three months rent. For the alleged breach of the rental agreement and failure to comply with § 7006, the Plaintiffs seek 25 percent retroactive rent abatement, post judgment interest and double the amount of their security deposit.

DISCUSSION

The Defendant asserts two grounds in support of its motion to dismiss. First, the Defendant sought to have the Complaint dismissed pursuant to CCP Civ. R. 55(bb2) because the Plaintiffs filed the Complaint in an untimely manner. Additionally, the Defendant claims that the Court lacks jurisdiction to hear the appeal pursuant to CCP Civ. R. 72.3(c), because it claims that the Plaintiff's Complaint on Appeal does not include the identical causes of action that were before the J.P. Court. I will address these issues in the order presented.

Timeliness

Pursuant to CCP Civ. R. 72.3(a), when the appellee has the duty to file the complaint on appeal, he or she must do so within 20 days after service of the process on appeal. The Plaintiffs were served on October 18, 2005. Accordingly, they had to file the Complaint on Appeal on or before November 7, 2005. Although the pleading is dated November 7, 2005, it was docketed on November 8, 2005.

Rule 55(bb2) of this Court's civil rules provides that when an appellee fails to comply with CCP Civ. R. 72.3(a), "judgment shall be entered against the appellee for failure to plead." However, if the Plaintiff can demonstrate excusable neglect in failing to comply with 72.3(a), and the Court finds that the Defendant was not prejudiced by the untimely filing, the Court may deny the Defendant's motion to dismiss for failure to file. *See Banks v. T&H Banks, Inc.*, 2002 WL 32007328, *1 (Del. Com. Pl.).

At the hearing, Plaintiffs' counsel informed the Court that his office

had incorrectly filed the Complaint with the Prothonotary of the Superior Court on November 7, 2005, rather than with the Clerk of this Court. Despite the Plaintiffs' neglect in filing the Complaint in the appropriate Court, it seems that the error was quickly remedied because it was filed with this Court the next day. Under the facts and circumstances before the Court, I find that the Plaintiffs committed excusable neglect and that the Defendant was not prejudiced by that neglect. Accordingly, the Defendant's motion to dismiss pursuant to CCP Civ. R. 55(bb2) is hereby denied.

Mirror Image Rule

In its motion, the Defendant argues that the Plaintiffs violated the mirror image rule when they filed their Complaint on Appeal. It is the Defendant's position that the Plaintiffs have added new causes of action that were not raised before the J.P. Court and deleted other causes of action that were asserted below. The Plaintiffs counter that the Complaint on Appeal does not raise or delete issues on appeal, rather, it merely specifies those causes of action that were before the J.P. Court. I have thoroughly reviewed the relevant documents and find that in the case before me, the causes of action on appeal are the same that were before the J.P. Court.

An appeal from a judgment rendered in the J.P. Court to this Court will be heard *de novo*. 10 Del. C. § 9570. This Court's Civil Rule 72.3 governs appeals *de novo*. Subsection (c) codifies the long-standing, common law "mirror image rule" or "*McDowell* rule." The Rule requires that the identical parties from the proceeding below be joined in the appeal, and that the same issues that were before the J.P. Court below also be raised on appeal. *See also Sulla v. Quillen*, 1987 WL 18425 at *1 (Del. Super.)(citing *Dzedzej v. Prusinski*, 259 A.2d 384 (Del. Super. 1969); and *Cooper's Home Furnishing, Inc. v. Smith*, 250 A.2d 507 (Del. Super. 1969); and *McDowell v. Simpson*, Del. Super., 1 Houst. 467 (1885) (defining the

common law mirror image rule). However, with respect to issues, when the complaint on appeal sets forth more specifically the causes of action that were raised below but does not alter the subject matter of the case below, there is no mirror image violation. *Crosse v. Cohen*, 2000 WL 33653441, *2. The Defendant argues that the Plaintiffs have expanded the causes of action on appeal from that which was before the J.P. Court, thus, it argues that the Plaintiffs have violated the Rule.

The Defendant urges the Court to examine the original Complaint to determine what causes of action were before the J.P. Court. In applying the mirror image rule, some courts have determined that the causes of action on appeal must be identical to that which were *heard and decided* by the trial court. *See Gaster v. Belak*, 318 A.2d 628 (Del. Super. 1974) *Dominick v. Harmony Talking Machine*, 88 A. 468, 469 (Del. Super. 1913); *Sulla* at *1; and *Ciliberti v. Cummings*, 2004 WL 3312523, *2 (Del. Com. Pl.). Such language indicates that the Court should look to the Order. However, other courts have reflected upon the original Complaint to determine whether a mirror image violation has occurred, finding that the rule limits the court's jurisdiction "to try that same action *as instituted* in the Justice Court (emphasis added)." *Cooper's Home Furnishing, Inc. v. Smith*, 250 A.2d 507, 508 (Del Super. 1913)(citing *Dominick* at 469); *see also Crosse v. Cohen*, 2000 WL 33653441, *1 (finding no violation of the mirror image rule when the plaintiffs set forth more specific counts on appeal than they had in the complaint below).

The purpose of the mirror image rule is to preserve the right to a trial *de novo*. *Cooper's Home Furnishing* at 508. A trial *de novo* means a trial anew; thus, the entire case that was before the J.P. Court must also be brought before this Court and the parties must occupy the same positions as they did below. *Id.*

There are, however, two very practical problems always inherent in this Court's determination of whether the matter on appeal is precisely,

and therefore jurisdictionally, the same matter that was before the court below. First, the Justice of the Peace Court is not a formal court of record. Often the transcript on appeal in a case consists of the pre-printed form complaint and answer filed below, with blanks filled in by *pro se* litigants, and a short docket entry of the magistrate's decision or judgment. As with this Court's original civil jurisdiction, judgments below are often rendered from the bench without written opinion. However, with no preserved verbatim record of the trial below, this Court often must attempt to determine what was "heard and decided" below from terse clerk's entries summarizing the decision and judgment of the court. Fortunately, in the present case the magistrate below issued a well-written decision after trial. Still, although such written opinions obviously must set forth what was *decided* below, they do not necessarily contain reference to all that was *heard* below.

Second, even if a record of the proceedings below is perfectly preserved, what was "heard and decided" below is, at best, a moving target. Parties may be added and/or dismissed up to the commencement of trial, by stipulation or order of the court. Pleadings may be amended, and claims added or dropped, up to the entry of judgment. The court below may amend, formally or informally, the pleadings to conform to the evidence actually presented at trial and enter a judgment that, upon viewing the docket, appears inconsistent with the pleadings filed. Indeed, the very reason for an appellant's *de novo* appeal may be that the court below improperly "heard and decided" a matter not raised in the complaint, or failed to "hear and decide" an issue a litigant believed he placed before the Court. If the mirror image rule requires the complaint on appeal to set forth the issues "heard and decided" below, or to ignore issues the court below may have failed to "hear and decide," in such situations, how can an appellant address the claimed error *de novo* when the complaint on appeal legitimizes the error? All this Court may be

certain of, in every case on appeal, is that the action below was commenced with the filing of written complaint, and that any counterclaims likewise were written and filed.

In addition, as in the present case, often the litigants below commence their action *pro se*, by filling in the pre-printed complaint form used in the Justice of the Peace Court. When the matter is appealed to this Court, however, such litigants often retain counsel, who then draft a complaint for filing with this Court that more artfully, and specifically, sets forth the litigants' claims in the proper terminology and form of pleading the Court expects from members of the Bar.

This Court's jurisdictional power to hear an appeal, and a litigant's right to appeal, should not be dependent on a variable ability to reconstruct what occurred in the course of a non-record trial. On the other hand, the prime tenet of the venerable "mirror image rule" is that it is a rule of jurisdiction, and not of procedure. The Court holds that both the jurisdictional requirement of the venerable "mirror image rule" and this Court's Rule 72.3 (c) are satisfied if the complaint on appeal presents no parties or issues other than those presented by the original complaint below. In such instance, this Court has jurisdiction to hear the matter *de novo*. Once appellate jurisdiction is thus established, the original parties may seek to amend the pleadings or otherwise add or dismiss issues or parties. The Court then must review the record of the proceedings below to determine whether such a change would result in this Court hearing on appeal an issue not "heard and decided" below, or exercising jurisdiction over a person or entity not a party to the proceedings below at some time during those proceedings.

This interpretation and application of the mirror image rule reconciles the divergent approaches in the prior caselaw, and establishes a "bright line" determination of the Court's obtainment of subject matter jurisdiction over an appeal, without ignoring the "jurisdictional" nature of

the venerable rule, and clearly delineates for appellants and appellees their respective responsibilities in perfecting and defending appeals. It also confirms the power of this Court, once jurisdiction is obtained, to ensure that such appellate jurisdiction is not improperly enlarged, to hear parties and address matters that properly fall within the ambit of what was “heard and decided” below, and to deny the addition of parties or addressing of matters that would divest the court of appellate jurisdiction.

Applying this analysis to the present case, the Defendant contends that the Complaint on Appeal adds two new causes of action and eliminates two original causes of action. First, the Defendant alleges that the Plaintiffs added a cause of action in their first count by seeking three months rent pursuant to 25 Del. C. § 7023(e). Second, the Defendant claims that the Plaintiffs have enlarged their Complaint with the addition of their request for retroactive rent abatement and double the amount of the security deposit for breach of the lease agreement in Count II of the Complaint on Appeal. The Defendant urges this Court to find that the Plaintiffs’ failure to request equitable relief also contravenes the mirror image rule. Additionally, the Defendant argues that the Plaintiffs have deleted their claim for a violation of the Act relating to an unsafe condition.

The original complaint filed in the court below was indeed a “fill in the blank” form complaint, completed by the *pro se* plaintiffs. It contains two mere sentences, one setting forth the cause or causes of action, the other the relief sought. The first sentence states “breach of contract, harassment, non-compliance of Chapter 70, providing unsafe conditions on the home lot.” The relief sought is to “remedy the erosion, reimburse for wages lost on court day.”

The Plaintiffs’ complaint on appeal is a ten page, typed formal pleading prepared by Plaintiff’s counsel. It sets forth two separately designated Counts. The first count is a claim for “retaliatory acts” and

seeks “the greater of 3 months’ rent or three times the damages sustained plus court costs,” in accordance with 25 *Del. C.* § 7023(e). Section 7023 of the Act prohibits landlords from engaging in retaliatory acts against their tenants. Subsection (e) sets forth the statutory remedy for tenants who establish that their landlord employed such tactics. The second count is a claim for breach of the rental agreement and further violation of provisions of Title 25, Chapter 70.

In comparing the two complaints, it is clear that the complaint on appeal does not expand the issues raised in the original complaint. The complaint on appeal merely states the original issues with more legal clarity and specificity. The “harassment” alleged in the original complaint below obviously is the basis for the claim of “retaliatory acts” in Count 1 of the complaint on appeal. Likewise, the broad claim below of “non-compliance of Chapter 70” sufficiently encompasses the more precise statements of violations of Title 25, Chapter 70 elucidated in Count 1 of the complaint on appeal.

The Plaintiffs’ second Count in the complaint on appeal alleges that the Defendant breached the rental agreement and simultaneously violated § 7006 of the Act, when it failed to re-grade the rental lot at issue, which the Plaintiffs claim created an unsafe erosion problem. In the original complaint the Plaintiffs sued for “breach of contract.” It is clear from the remedy requested in the pleading that the ground for the breach of contract claim is the alleged erosion of the rental lot. Again, the broad *pro se* claim in the original complaint, together with the allegation of “non-compliance of Chapter 70,” fully encompasses the issues more specifically raised in Count 2 of the complaint on appeal.

The Defendant contends that the Plaintiffs’ failure to assert on appeal that the community rules were unreasonable violates the mirror image rule. (Def. Mot. Dismiss ¶ 11.) The Defendant argues that this was the basis for the J.P. Court judgment. However, the judgment below was

based on a finding that the Defendant committed retaliatory acts against the Plaintiff. In any event, the original complaint did not set forth a claim that the community rules were unreasonable, and thus under the Court's holding *supra*, the complaint on appeal need not contain this claim to satisfy the mirror image rule and vest this Court with jurisdiction.

As a remedy for the alleged breach of the rental agreement, the Plaintiffs seek 25 percent retroactive rent abatement during the time of the claimed breach, and double the amount of the security deposit. The Defendant argues that the mirror image rule prohibits the Plaintiffs from seeking the remedies now requested because they were not solicited below. The Defendant also urges that the Plaintiffs are limited to seeking equitable relief on appeal. Essentially, the Defendant argues that the request for relief on appeal raises a new cause of action, and the failure to seek equitable relief relinquishes a cause of action, both of which it claims violate the mirror image rule.

Generally, so long as the requested remedy does not change the nature of the claim asserted below, there is no mirror image violation. *Ciliberti v. Cummings*, 2004 WL 3312523, *3 (Del. Com. Pl.) (holding that the plaintiff did not violate the mirror image rule when he raised a claim for rent below and on appeal, but requested a different remedy on appeal). The terms "cause of action" and "remedy" hold separate and distinct meanings. Historically, the mirror image rule applies to causes of action, which have also been identified as issues in relevant case law. See *Cooper's Home Furnishing, Inc. v. Smith*, 250 A.2d 507, 508 (Del Super. 1913). "Cause of action" is defined as "a factual situation that entitles one person to obtain a remedy in court from another person." BLACK'S LAW DICTIONARY (8th ed. 2004). A "remedy" is "the means of enforcing a right or preventing or redressing a wrong." BLACK'S LAW DICTIONARY (8th ed. 2004).

Despite the different meanings of the terms, certain requests for

relief may, by their nature, amount to separate causes of action. See *Spallco Enter. v. Johnson*, 2002 WK 32023190 (Del. Com. Pl.). In *Spallco*, the Court held that the plaintiffs were barred from seeking attorney fees on appeal because such cause of action was not raised below and would violate the mirror image rule. *Id.* at *4. In the present case, however, although the remedies sought on appeal may not be identical to those requested below, the nature of the Plaintiffs' claims is not changed by the change in remedies sought.

Lastly, Defendant's assertion that the Complaint fails to include any claim based on the existence of unsafe conditions on the premises in violation of the Act is without merit. (Def. Mot. Dismiss ¶ 11.) Specifically, Count II sets forth precise facts and law that relate to the existence of the erosion problem, which if established, constituted an unsafe condition that would violate the Act.

CONCLUSION

For the foregoing reasons, the Court finds that the Complaint on Appeal does not violate the mirror image rule, or Civil Rule 72.3 (c). Therefore, the Defendant's motion to dismiss for lack of jurisdiction is **DENIED**.

IT IS SO ORDERED.

Kenneth S. Clark, Jr.
Judge